

FILED

FEB 19 2019

SUSAN Y. SOONG
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Shikeb Saddozai-CDCR # AY1590
California Correctional Institution
Facility C1-243
P.O. Box 1905
Tehachapi, California 93581
In Pro se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,

Plaintiff,

V.

N. Malikian, et al.,

Defendants.

Case No.C-18-05558 BLF(PR)

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF'S MOTION FOR THE
APPOINTMENT OF COUNSEL

Statement of the Case

This is a civil rights case filed under 42 U.S.C §1983 by a state prisoner and asserting claims for the unconstitutional denial of medical care out of deliberate indifference, denial of due process and for injuries inflicted resulting from the denial of medical care. The plaintiff seeks damages as to all claims.

Statement of Facts

The complaint alleges that the plaintiff was denied serious medical needs by correctional officers who acted with deliberate indifference, when officers and medical personnel disregarded requests for medical attention based on plaintiffs complaint of being shot by officer, due to his negligence while being beaten and battered by three inmates.

1 plaintiff was tdenied immediate doctors attention,nor provided
 2 medician for pain and suffering, plaintiff complained
 3 of chronic pain,skin rasheses and infections to correctional
 4 officers who refused to notify medical personnel. Medical
 5 conditions have disabled plaintiff and has interfered with his
 6 life activities and the existence of chronic, and substancial
 7 pain. Correctional officers threatened plaintiff with violence
 8 and to subsequent disciplinary proceedings to prevent plaintiff
 9 from initiating a complaint. Each defendant at all times acted
 10 "Under Color of State Law" some of whom are related in case
 11 matters,actively threatened plaintiff with violence for complaining
 12 and failed to intervene. Plaintiff alleges supervisory officials
 13 were aware of violent propensities of some of the officers and
 14 are liable for failing to take action to control them , who were
 15 incharge of running facilities and provide medical services to
 16 prisoners , and failed enforcing the policy and practice that
 17 led to the violation of plaintiffs rights secured by the
 18 Constitution or laws of the United States. Plaintiffs verfied
 19 complaints filed , were ignored, and supervisory officers failed
 20 to react , while being aware of ongoing abuse and mistreatment
 21 by their subordinate officers and no attempts were made
 22 to remedy problem. Plaintiff was repeatedly denied complaint,
 23 and medical forms,&equal rights and privileges made available to
 24 all prisoners detained in prison custody to participate in
 25 scheduled religious services,law library,educational,mental
 26 health,and recreational programs,nor provided means to maintain
 27 daily personal hygiene needs,and continuously had his legal
 28 mail violated,and destroyed to obstruct plaintiffs access to
 the courts and from assisting in his defense.

16 ARGUMENT

17 THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF.

18 In deciding whether to appoint counsel for an indigent litigant,
 19 the court should consider "the factual complexity of the case,the
 20 ability of the indigent to investigate the facts, the existence
 21 of conflicting testimony, the ability of the indigent to present
 22 his claim and the complexity of the legal issues." Abdullah v.
 23 Gunter,949 F.2d 1032,1035(8th Cir.1991)(citation omitted).
 24 In additionn, courts have suggested that the most important factor
 25 is whether the case appears to have merit. Carmona v. U.S
 26 Bureau of Prisons , 243 F.3d 629, 632 (2d Cir.2001).
 27 Each of these factors weighs in favor of appointment of counsel
 28 in this case.

1
2 1. Factual Complexity. The plaintiff alleges that multiple
3 correctional officers acted with deliberate indifference to
4 serious medical needs , when officers and medical personnel
5 disregarded requests for medical attention based on plaintiff's
6 complaints of pain, skin rashes, and infections while other
7 officers stood by and watched. Plaintiff also asserts that
8 prison supervisors were on notice of the violent propensities
9 of some of those officers and did nothing about them .
10 Plaintiff challenges the denial of medical care after the incident
11 by multiple defendants. Finally when plaintiff engaged in filing
12 a complaint officers threatened (with violence and a) disciplinary
13 proceedings out of retaliation to prevent plaintiff from initiat-
14 -ing a civil rights suit, thereby violating plaintiffs due process
15 and 1st amendment. The sheer number of claims and defendants
16 makes this a factually complex case.

17 In addition, one of the plaintiff's claims involves the denial
18 of medical care ; it will probably be necessary to present a
19 medical expert witness or to cross examine medical witnesses
20 called by defendants , or both. The presence of medical or other
21 issues requiring expert testimony supports the appointment of
22 counsel. *Montgomery v. Pinchak*, 294 F.3d 492, 503-04 (3d Cir.2002);
23 *Moore v. Mabus*, 976 F.2d 268, 272 (5th Cir.1992); *Jackson v. County*
24 *of Mclean*, 953 F.2d 1070, 1073 (7th Cir.1992).

25 2. The plaintiff's ability to investigate. The plaintiff is locked
26 up and has no ability to investigate the facts. For example,
27 plaintiff is unable to identify, locate, and interview the
28 inmates who were housed in nearby cells and who saw some or all
of the events that took place. Plaintiff is in the same situation
with regard to developing the facts as an inmate who has been
transferred to a different institution, a factor that several
courts have cited in appointing counsel. *Tucker v. Randall*, 948
F.2d 288, 391-92 (7th Cir.1991); *Gatson v. Coughlin*, 679 F.Supp.
270, 273 (W.D.N.Y.1988). In addition this case will require
considerable discovery concerning the identities of witnesses,
the officer's reports and statements about the incident, any
prior history of denial of medical care, retaliation, misuse
of force by the officers, and the plaintiff's medical history.
See *Parham v. Johnson*, 126 F.3d 454, 459 (3d Cir.1997) (holding
counsel should have been appointed because "prisoners lack of
legal experience and the complex discovery rules clearly put
plaintiff at disadvantage in countering the defendants
discovery tactics...these [discovery] rules prevented [the
plaintiff] from presenting an effective case below").

1 3. Conflicting testimony. The plaintiff's accounts of the denial
 2 of medical care by officers who acted with deliberate indifference
 3 , while other officers watched and failed to intervene. Super-
 4 visory officials who were incharge of running facility and
 5 provide medical services to prisoners , failed carrying out the
 6 policy and practice that led to the violation of plaintiffs rights.
 This aspect of the case will be a credibility contest between the
 defendants and the plaintiff (and such inmate witnesses as can be
 located). The existence of these credibility issues supports
 the appointment of counsel. Steele v. Shah, 87 F.3d 1266, 1271
 (11 Cir.1996); Gatson v. Coughlin, 679 F.Supp. at 273.

7
 8 4. The ability of the indigent to present his claim. The plaintiff
 9 is an indigent prisoner with no legal training , a factor that
 10 supports the appointment of counsel . Forbes v. Edgar, 112 F.3d
 11 262, 264 (7th Cir.1997). In addition plaintiff is confined with
 12 extremely limited access to legal materials. Rayes v. Johnson,
 969 F.2d 700, 703-04 (8th Cir.1992) (citing lack for ready access
 to a law library as a factor supporting appointment of counsel).

13 5. Legal complexity. The number of defendants , some of whom
 14 are supervisory officials, presents complex legal issues of
 15 detirmining which defendants were sufficiently personally involved
 16 in the Constitutional violations to be held liable.
 17 Hendricks v. Coughlin, 114 F.3d 390, 394 (2d Cir.1997) (holding
 18 complexity of supervisory liability supported appointment of
 counsel). In addition, the plaintiff has asked for a jury trial,
 which requires much greater legal skill than the plaintiff has
 or can develop. Solis v. County of Los Angeles, 514 F.3d 946, 958
 (9th Cir.2008) (prisoner with eighth grade education and no legal
 training is "ill-suited" to conduct a jury trial).

19
 20 6. Merit of the case. The plaintiff's allegations, if proved,
 21 clearly would establish a constitutional violation. The denial
 22 of medical care alleged in the complaint clearly states an
 Eighth Amendment violation. See Estelle v. Gamble, 429 U.S. 97, 104
 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.1992).
 23 The allegations of denial of medical care amount to "intentionally
 24 interfering with the treatment once prescribed," which the
 Supreme court has specifically cited as an example of
 25 unconstitutionall deliberate indifference to prisoners medical
 26 needs. On its face, then, this is a meritorious case.

CONCLUSION

For the foregoing reasons, the court should grant the plaintiff's motion and appoint counsel in this case.

February 12, 2019

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